

(2004) 04 DEL CK 0083

In the Delhi High Court

Case No : WP (C) No. 1389 of 1983

Mrs. P.L. Agarwal (since deceased through LRs)	APPELLANT
Vs	
Lt. Governor and Others	RESPONDENT

Date of Decision : 26-04-2004

Acts Referred:

Citation : (2004) 111 DLT 374 : (2004) 74 DRJ 349

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : N.K. Kantawala, for the Appellant; Sujata Kashyap, for respondents 2 and 3 and Atul Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petition is being pursued by the children of the petitioner, who died during the pendency of the proceedings in this court. Petitioner prays :

(a) Issue a writ of certiorari and/or any other appropriate writ, order or direction for quashing the order passed on February 22, 1983 by the 5th respondent school;

(b) Issue a writ of certiorari and/or mandamus for quashing the order passed by the 5th respondent on February 22, 1983 and direct the 5th respondent school to reinstate the petitioner.

(c) Issue an appropriate writ, order or direction and to declare that the petitioner is duly qualified to hold the post of a teacher for purposes of teaching a modern Indian language in the 5th respondent school;

2. With effect from 1.9.1970, petitioner was employed as a teacher by respondent no.5 school. Being a post graduate in Hindi, petitioner alleges that she was teaching Hindi up to Class XI. As per the petition, respondent no.5 school was affiliated with the Central Board of Secondary Education which had framed affiliation bye-laws and as per the said bye-laws, a post graduate degree

was specified as the eligibility norm for a person to be employed as a teacher to teach any of the modern Indian languages. Petitioner alleges that when she was employed by the school, she was fully eligible for being appointed as a teacher to teach modern Indian language, being Hindi.

3. Petitioner alleges that on 1.7.1975, a service agreement was entered into between the school and the petitioner and as per the said service agreement, vide Clause XI, age of superannuation of the petitioner was 58 years.

4. Petitioner alleges that on 17.6.1977, she received a communication from the school as under :

"As per the directive of the Director of Education, New Delhi, untrained staff are required to get themselves trained within 2 years. You are accordingly requested to do B.Ed training within 2 years positively. Kindly acknowledge receipt of this letter."

5. Petitioner claims to have responded to the said communication on 29.5.1978. Petitioner wrote back to the school as under :

"The Manager,

The Mother's Intl.School

Sri Aurbindo Marg,

New Delhi- 110 016.

Sir,

May I refer to your letter No. MIS/T2-24/74 of 17th June,1977. While exploring where it could be more convenient for me to take admission for B.Ed., I have come to learn on more than one hand that in a case like mine, no diploma or degree in Education should be called for.

On further and deeper enquiries I was referred to the relevant clause 3(1) entitled 'Minimum Qualifications for Teachers of Institutions affiliated to the Board' given on page 113 of "Central Board of Secondary Education: Handbook for Affiliation on Institutions" according to as is detailed there.

Teachers of Modern Indian Language, which include Hindi, are not required to hold a degree or a diploma in Education; it being sufficient for them to be holding a University degree in the language concerned as a subject. Where in the case of other subjects, such as English, Mathematics and Science etc., a degree or diploma in Education is necessary: it has been mentioned specifically.

Before doing anything either way, I shall now look forth to receiving clear instructions from you on the matter. I do hope I shall be obliged.

Kindly acknowledge receipt of this letter on its copy attached."

6. Petitioner alleges that in her reply dated 29.5.1978, she clearly brought out to

the management that as per the CBSE affiliation bye-laws, she was fully eligible to be appointed as a teacher.

7. Petitioner alleges that in view of her communication dated 29.5.1978, she was expecting and looking forward to receive clear instructions from the school when, all of a sudden she received a communication dated 13.12.1982 to the effect that since she had not obtained the requisite qualifications, she should see the Deputy Education Officer, South Zone. Petitioner alleges that she tried to meet the Deputy Education Officer in the first week of January, 1983 but he refused to meet the petitioner.

8. On 22.2.1983, petitioner received a communication from the school informing her that her services stood terminated with immediate effect. Following was communicated to the petitioner :

"Smt. Prem Lata Aggarwal

D-37, Press Enclave, Saket,

New Delhi-110017.

Madam,

As you are untrained, you were requested on 17 June 1977 as per the directive of Directorate of Education, to do B.Ed training within 2(two) years. Since you have failed to acquire professional qualification even after a lapse of 5 years, the Directorate of Education has directed that your services should be dispensed with immediately. Accordingly, this is to inform you that your services in the Mother's International School are terminated with immediate effect.

You should hand over charge to the Vice-Principal, Shri R.C. Shekhar, and settle your accounts with Accounts Department.

Yours faithfully,

for The Mother's International School

Sd/-

R.K. Madan

Manager"

9. As would be evident from the prayers made in the writ petition, noted above, it is this communication which has been challenged.

10. Counter affidavit filed by the respondent school joined issues with the petitioner by stating that with the promulgation of the Delhi School Education Act, 1973 and the promulgation of the Delhi School Education Rules, 1973, acting in exercise of statutory powers vested in the Administrator of the Union Territory of Delhi u/s 8 of the Act and Rule 100 of the Rules, minimum educational qualifications for teachers who were eligible to teach in recognized

schools were prescribed. Inter alia, the rules prescribed that a person must have B.Ed degree to be qualified, to be appointed in a recognised school. As per the school, with the promulgation of the Delhi School Education Act, 1973 and the Rules of 1973, the school had to seek recognition from the Director of Education. While granting recognition to the school, the Director of Education made it a condition that untrained teachers must obtain the necessary educational qualifications. This was duly conveyed by the school to the petitioner who informed the school, that she had enrolled with Ranchi University to obtain B.Ed degree. In 1979, in response to a query whether petitioner had obtained the B.Ed degree, petitioner informed the Principal of the School on 31.7.1979 as under :

"Dear Madam,

I was required to sit for my B.Ed examination. I have got myself enrolled for this purpose at the Ranchi University. The examination were to be held in the month of May'79, but owing to the unsettled political conditions, the same will be held in the third week of August or 1st week of September as reported. I shall be communicating the exact dates to you as soon as I am informed.

Thanking you,"

11. As per the school, since no further information was received from the petitioner, on 29.1.1980, following note was communicated to the petitioner :

"Smt. Prem Lata Aggarwal,

New Delhi.

As per the directive of the Director of Education, you were requested on 17 June, 1977 to do B.Ed training within 2(two) years. Has it been done?

If so, attested copies of the mark sheet and the B.Ed certificate may be submitted so that we may inform the Director of Education."

12. Petitioner responded under cover of a letter dated 5.2.1980, following was communicated by the petitioner :

"Sir,

As per the directive of the Director of Education for doing B.Ed, training, I enrolled myself in the University of Ranchi for the same. The examination was scheduled in November 1979, but owing to some unforeseen conditions prevailing over there, the examination has been postponed. It is now expected to be held in May 1980.

Thanking you"

13. As per the school, it was, Therefore, wrong on the part of the petitioner to contend that nothing was communicated to her in response to her letter dated 29.5.1978 and it is equally wrong for the petitioner to contend that she was

awaiting clarification in response to her letter dated 29.5.1978.

14. According to the school, the petitioner did not obtain the necessary B.Ed degree. On 30.11.1982, the Director of Education wrote to the school in respect of the petitioner and another teacher, enquiring whether they had obtained the necessary qualifications. On 13.1.21982, the school informed the petitioner as under :

"Smt. Prem Lata Aggarwal,
New Delhi.

In June 1977 the Director of Education, New Delhi had brought to our notice that you were untrained at the time of your appointment in the School. As per his directive, we had requested you on 17.6.1977 to do the B.Ed training within two years positively. You had informed us that you had enrolled yourself in the University of Ranchi. Since the two years had elapsed and you had not reported whether or not you had completed the training, we had sent you a reminder on 29th January, 1980. You replied that owing to some unforeseen conditions prevailing in Ranchi the postponed examination was expected now to be held in May, 1980. The matter rested there.

As more than five years have elapsed and you have still not done your B.Ed training, the Director of Education has enquired whether or not you have qualified or whether you have been exempted. We have informed Sh. K.P. Singh, Dy.Education Officer, Zone S-19, Directorate of Education, South District, defense Colony, that you will call personally and explain the position to him; you may do this. After you have done this you may let us know the position in writing."

15. As per the school, nothing was heard from the side of the petitioner and on 28.12.1982, the Director of Education wrote to the school as under :

"Madam,

"With reference to your letter No.MIS/DE6- 3/81 dated 13-12-1982 on the subject cited above, this is to inform you that Smt. Lata Aggarwal and Km. Anima Chandra TGT (Lang.) have since failed to acquire professional qualification even after a lapse of 5 years, their services should be dispensed with immediately under intimation to this office.

I am to further request you to furnish latest compliance report in respect of fulfillment of the conditions laid down in letter No.F.I-1(4)/77/Z-IX.G/2205-2229 dated 10.6.77 and F.I-1(3)/78/Z.IX.G/1700 dated 17.4.79."

16. As per the school, the Director of Education wrote letters to the school on 29.1.1983, 1.2.1983, 15.2.1983, directing compliance with the letter dated 28.12.1982 and as a consequence thereof the school had no option but to issue the letter dated 22.2.1983 to the petitioner.

17. As per the counter affidavit filed by the Director of Education, it was

necessary for the petitioner to have obtained the B.Ed degree. She undertook to obtain the B.Ed degree. Sufficient time was given to the petitioner. The school was granted recognition in the year 1977 and sufficient time, 5 years, was given to the petitioner to obtain the qualifications. Petitioner, not having obtained the necessary qualifications could not be retained as a teacher in the school and hence the directions issued by the Director of Education to dispense with the services of the petitioner was justified.

18. With a view to provide for better organization and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto, the Delhi School Education Act, 1973 was enacted by the Parliament. It came into force with effect from 10.4.1973. Under the Act the Administrator of the Union Territory of Delhi was the Administrator referred to under the Act.

19. u/s 3 of the Act, the Administrator was empowered to regulate education in all schools in Delhi in accordance with the provisions of the Act and the Rules made under the Act.

20. Appropriate authority stood defined u/s 2 (e) of the Act and in case of schools to be recognized by the Delhi Administration, appropriate authority was the Administrator or any other officer authorized by him in this behalf.

21. Section 4 of the Act deals with recognition of schools. It reads as under:-

"Section 4 (1) :

"The appropriate authority may, on an application made to it in the prescribed form and in the prescribed manner, recognize any private school;

Provided that no school shall be recognized unless -

(a)(b)(c)(d) (e) it has teachers with prescribed qualifications; and

(f)"

Sub-section (1) of Section 8 of the Act reads as under :

"Section 8(1): The Administrator may make rules regulating the minimum qualifications for recruitments, and the conditions of service, of employees of recognized private schools."

22. Section 13 of the Act deals with unaided minority schools. Section 13 of the Act reads as under :

"Section 13: The Administrator may make rules regulating the minimum qualifications for, and method of, recruitment of employees of unaided minority schools;

Provided that no qualification shall be varied to the disadvantage of an existing

employees of an unaided minority school."

23. It would, thus, be noted that the Legislature has created an exception only in favor of existing employees of unaided minority schools. Qua them, no qualification can be prescribed which shall have the effect of varying their existing employment or which may be to their disadvantage. Such a benefit has not been carved out by way of exception in favor of existing employees of other private schools.

24. Admittedly, minimum educational qualifications for being appointed as teachers in a recognized school which were notified by the Administrator required a teacher to have, amongst others, B.Ed degree.

25. Petitioner, admittedly did not have B.Ed. Degree. It is not the case of the petitioner that respondent No.5 is a minority institution. Respondent No.5 is a private school which has been recognized under the Act. As per the mandate of Section 4 of the Act, while granting recognition it was the duty of the Director of Education to ensure that the school does not have any teacher who does not possess the prescribed qualifications. Therefore, while granting approval to the school, the Director of Education was fully justified in placing the condition that unqualified teachers acquire the necessary qualifications. This was duly communicated to the petitioner, who initially responded by writing a letter dated 29.5.1978 to the effect that she was not required to obtain the B.Ed. Degree but on being communicated that she must acquire the same, agreed to acquire the B.Ed. qualification, evidenced by petitioner's letter dated 31.7.1979. When reminders were sent to her, vide letter dated 5.2.1980, petitioner informed that she would soon obtain the B.Ed. Degree. It is, Therefore, not a case where the petitioner was not informed that she had to obtain the necessary educational qualification. Not only was the petitioner informed but her query was satisfied and thereafter she undertook to obtain the necessary educational qualifications.

26. Five years were given to the petitioner to obtain the necessary educational qualifications. Indeed, the principal object of the Delhi School Education Act, 1973 was to develop and organize school education in Delhi. One of the necessary ingredients of improving standard of education in Delhi was to have qualified teachers. Therefore, prescribing B.Ed. Degree as one of the essential qualifications was fully justified. Indeed, petitioner has not questioned the notification prescribing B.Ed. Degree as one of the essential qualifications to be appointed as a teacher in a recognized school in Delhi.

27. This issue has cropped up on earlier occasions. In WP(C) No.1337/1976, Braham Dutt Sharma Vs. Sh. H.K. Arora and Ors. decided on 18.1.1996 1996 RLR 73, this court upheld the action of the Director of Education requiring pre-existing staff of schools which had sought recognition from Director of Education with the coming into force of the Delhi School Education Act, 1973 to acquire the necessary qualifications. Similarly in WP(C) No.15/1977 Smt. Krishna Vs. H.K. Arora decided on 19.1.1996, it was held that as per the mandate of Delhi School

Education Act, 1973 and the Rules framed there under, a language teacher must possess the minimum qualifications as prescribed. Non-approval by the competent authority to the continued employment of an unqualified teacher was upheld to be legal and valid.

28. In the decision dated 10.2.2004 in WP(C) 583/1980 Mrs. Prem Lata Dutta Vs. Union of India & Ors. termination of services of a teacher employed in a private school on the ground that she did not obtain the requisite educational qualifications when the Delhi School Education Act, 1973 came into force in spite of adequate opportunity being provided to her was upheld.

29. I find nothing illegal in the letter dated 22.2.1983 issued by the school, in compliance with the Directive dated 28.12.1982 issued to the school by the Director of Education. The rule is discharged.

30. Writ petition is dismissed. No costs.